

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JODY LYNN COOPSHAW, and
ROBERT LARRY THORNTON,
as Next Friend of ALEXIS PAIGE
ARECENA, a Minor

Plaintiffs,

Case: 2:06-cv-13246
Assigned To: Borman, Paul D
Referral Judge: Scheer, Donald A
Filed: 07-18-2006 At 03:03 PM
CMP COOPSHAW, ET AL V FIGURSKI, ET
AL (EW)

v.

DETECTIVE SERGEANT JOHN
FIGURSKI, individually, of the Michigan
State Police; FIRST LIEUTENANT
STEVEN FARRELL, individually, of the
Michigan State Police;
IRV SHAW, officially and individually, of
the Lenawee County Prosecutor's
Office; and COUNTY OF LENAWEЕ,
a governmental entity,

Defendants.

_____/

Courtney E. Morgan, Jr. (P29137)
Brian J. Nagy (P65542)
Attorneys for Plaintiffs
Morgan & Meyers, PLC
3200 Greenfield, Suite 260
Dearborn, MI 48120-1802
(313) 961-0130

_____/

COMPLAINT AND JURY DEMAND

NOW COMES the above-named Plaintiffs, JODY LYNN COOPSHAW, and
ROBERT LARRY THORNTON, as Next Friend of ALEXIS PAIGE ARECENA, a Minor,
by and through their attorneys, MORGAN & MEYERS, PLC, and for their Complaint
against the above-named Defendants, state as follows:

JURISDICTION

1. At all times pertinent to this complaint, Plaintiff Jody Lynn Coopshaw was a resident at 1897 West Maumee Street, Apartment A6, of the City of Adrian, County of Lenawee, State of Michigan.

2. At all times pertinent to this complaint, Alexis Page Arecena was a resident at 1897 West Maumee Street, Apartment A6, of the City of Adrian, County of Lenawee, State of Michigan.

3. Plaintiff Robert Larry Thornton is a resident of Lenawee County and has petitioned the Court in a supplemental motion to be the Next Friend to Alexis Paige Arecena, a minor. Mr. Thornton is the father of Jody Lynn Coopshaw and the grandfather of Alexis Paige Arecena.

4. Plaintiff Jody Lynn Coopshaw is the mother of Alexis Paige Arecena and Jesalynn Simons.

5. Defendant, Detective Sergeant Figurski, is an individual who, at all times pertinent hereto, was an officer of the Michigan State Police acting under color of state law.

6. Defendant, First Lieutenant Steven Farrell, is an individual who, at all times pertinent hereto, was an officer of the Michigan State Police acting under color of state law.

7. Defendant, Irv Shaw, is an individual who, at all times pertinent hereto, was an attorney for Lenawee County acting under color of state law.

8. Defendant, Lenawee County, is a governmental entity established and existing under the laws of the State of Michigan.

9. The acts giving rise to this action occurred in whole or in part, in the County of Lenawee, State of Michigan.

10. All of the individuals named in this action were acting under color of state law and within the course and scope of their duties at the time the events that form the basis for this action took place.

11. All of the individuals named in this action are sued in their individual capacities. Lenawee County Prosecutor Irv Shaw is also sued in his official capacity as assisting Detective Figurski in the conduct of his so called investigations.

12. This Court has jurisdiction over Counts I, II, III, IV, and V of this action as they arise under the First, Fourth, and Fourteenth Amendments of the Constitution of the United States, and thus present a Federal Question pursuant to 42 USC § 1983, 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

13. The amount in controversy is in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of costs, interest and attorney fees.

FACTUAL ALLEGATIONS

14. On or about December 11, 2003, at approximately 5:00 p.m., Lenawee County Sheriff officers attempted to stop a 1986 Buick Century four-door, driven by Jesalynn Simons, now deceased, for a minor traffic violation in the City of Adrian, County of Lenawee, State of Michigan.

15. For reasons unknown, Ms. Simons failed to stop for the Lenawee County Sheriff vehicle and a pursuit ensued. Additional police vehicles from both the Lenawee County Sheriff's Department and the Michigan State Police became involved.

16. During the pursuit certain police vehicles initiated contact with Ms. Simons' vehicle in an attempt to force her vehicle off the road. While Ms. Simons' vehicle was on the side of the road surrounded by police vehicles, Michigan State Police Trooper David Revard stepped out of his vehicle, drew his gun, and shot Ms. Simons through her vehicle's passenger side front window. The trooper's bullet entered Ms. Simons' right outer thigh, hitting the right femoral artery and exiting the right inner thigh. The same bullet then entered Ms. Simons' left thigh and exited at the back of the left thigh area. Soon after the shooting, Ms. Simons lost consciousness.

17. Paramedics arrived and Ms. Simons was transported from the scene to a hospital in Toledo, OH in critical condition.

18. On or about December 12, 2003, at approximately 7:15 a.m., Jesalynn Simons, who never regained consciousness, **expired** as a result of gunshot wounds, inflicted by Trooper Revard.

19. On or about December 16, 2003, Defendant Figurski, with assistance from and in conspiracy with Defendant Shaw, both knowing Jesalynn Simons was dead, unreasonably sought and obtained a facially invalid search warrant (Exhibit 1) without probable cause for the apartment of Plaintiff Jody Coopshaw and Alexis Page Arekena at 1897 West Maumee Street, Apartment A6, Adrian, MI to conduct an unreasonable general and exploratory search for evidence the Defendants failed to describe with particularity and had no reasonable basis to believe existed.

20. Defendants Shaw and Figurski relied on a named informant in the affidavit supporting the search warrant. None of the Defendants ever confirmed the named informant's allegations. Neither Defendant Shaw nor Defendant Figurski requested or

received any documentation confirming that the named informant was who s/he said s/he was. Neither Shaw, Farrell, nor Figurski performed a background check to determine the credibility of the named informant or her allegations. Neither Shaw, Farrell, nor Figurski corroborated or confirmed through any other source any of the information the named informant allegedly gave to Defendant Figurski. The named informant had no personal knowledge of any evidence of a crime at Plaintiff's residence. The named informant had no credibility or reliability as an informant. The Defendants relied on unconfirmed and uncorroborated hearsay information of the named informant. The named informant's information did not provide probable cause to search Plaintiff's home. The named informant, Defendant Farrell, Defendant Figurski, and Defendant Shaw had no knowledge of any connection between Jesalynn Simons' personal effects, including writings, and any alleged crime committed by Jesalynn Simons or anyone else.

21. Defendants also had no reasonable basis to believe they could charge Jesalynn Simons with any crime because they knew she was dead, nor did Defendants have any reasonable basis to conclude that Jesalynn Simons was part of any ongoing or previously existing criminal enterprise. The search warrant affidavit states that Jesalynn Simons was dead at the time the search warrant was sought (Exhibit 1, page 4). The search warrant also contains a facially invalid 'catch-all' clause that gave officers conducting the search unlimited discretion in determining the items to be searched for and seized. The Defendants' true motive for seeking and executing the search warrant was an attempt to: intimidate and/or harass the Plaintiffs into not filing a civil action related to the death of Jesalynn Simons, attempt to taint the public image of

the Plaintiffs, improve the public image of Defendants and other law enforcement officials and entities, and to search for potentially exculpatory evidence in anticipation of civil litigation. No larger conspiracy or possibility of crimes other than those allegedly involved in the police chase and shooting is sworn to in the search warrant. Jody Coopshaw and Alexis Paige Arecena had clearly established Fourth and Fourteenth Amendment Constitutional rights to be free from an unreasonable search pursuant to a search warrant which was facially invalid, without probable cause and granted broad discretion to executing officers to determine what items they wished to search for or seize. The Defendants' actions were unreasonable and only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing. The Defendants' actions shock the conscience. Plaintiffs Jody Coopshaw and Alexis Arecena also have firmly established First Amendment rights to freedom of association and to petition the Government for a redress of grievances. Defendant's actions in obtaining and executing the search warrant wrongfully interfered with Plaintiffs' exercise of those rights.

22. According to the search warrant, the property and things to be searched for included:

Any/all notebooks, journals, diaries, letters, notes, computer based information appearing to belong to Jesalynn Simons, an approximate six inch by six inch black box, and **any other evidence which may explain** the manner in which said vehicle was operated, and/or why the vehicle operator evaded a traffic stop, attempted to flee and elude the police effort to stop the vehicle safely and assaulted police officers with said vehicle.

Exhibit 1, page 1

23. On or about December 16, 2003, in the late afternoon, Plaintiffs were attending the funeral of Plaintiff Jody Coopshaw's daughter and Plaintiff Alexis Page Arecena's sister, Jesalynn Simons.

24. On or about December 16, 2003, at approximately 4:45 p.m., Defendant Figurski, Defendant Farrell, several troopers of the Michigan State Police Department, and several officers of local police departments met at the Adrian Michigan State Police Post where they unreasonably discussed, agreed, and conspired to a plan of violating Plaintiffs' Fourth and Fourteenth Amendment rights by unreasonably conducting a search of Plaintiffs' residence pursuant to a facially invalid search warrant.

25. In furthering the conspiracy to violate Plaintiffs' First, Fourth, and Fourteenth Amendment rights, Defendants Figurski and Farrell unreasonably conspired to search for evidence outside the scope of the facially invalid warrant without probable cause by unreasonably agreeing to search for a possible narcotics connection in Plaintiffs' home, despite there being no probable cause or reasonable basis to believe there were any illegal drugs connected with or in the possession of Ms. Simons (deceased) or Plaintiffs.

26. Defendant First Lieutenant Farrell, who was commander of the Adrian Michigan State Police Post where the conspiratorial plan to violate Plaintiffs' First, Fourth, and Fourteenth Amendment rights was devised, not only unreasonably participated in the plan and conspiracy, but also unreasonably expressly approved the operational plan to implement the violation of Plaintiff's rights.

27. On or about December 16, 2003, from approximately 5:30 to 6:15 p.m., while Plaintiffs were attending the funeral for their deceased relative Jesalynn Simons,

Defendant Figurski, multiple troopers of the Michigan State Police Department, and multiple officers of local police departments, all of whom acting under the direction of Defendants Figurski and Farrell, executed the unreasonable search without probable cause at Plaintiff's residence located at 1897 West Maumee Street, Apartment A6, Adrian, MI. All of the officers who executed the search warrant and performed any searches, including Detective Figurski, exercised broad discretion to search for "any other evidence which may explain the manner in which said vehicle was operated..." (Exhibit 1, page 1).

28. Defendant Figurski and others at his direction ransacked Plaintiffs' residence, throwing things about.

29. Defendant Figurski and others at his direction unlawfully and unreasonably entered and searched throughout Plaintiffs' entire home, including rooms where there was no probable cause to believe that items listed in the search would be found, such as Ms. Coopshaw's bedroom and bathroom, and personal belongings, including items of personal clothing, hygiene, and medication (officers wrote down the names of prescriptions being taken by Jody Coopshaw), in a general and exploratory search for any evidence that Defendants might use in future civil litigation and/or to counter adverse publicity over the shooting death of Jesalynn Simons, and to intimidate and harass the Plaintiffs.

30. Defendant Figurski and others at his direction also unlawfully and unreasonably searched for narcotics. None were found.

31. Defendant Figurski, without probable cause, seized personal writings of the deceased Jesalynn Simons and the computer belonging to Plaintiffs which

contained their personal information and private writings, interfering with Plaintiffs' freedom of association with their deceased relative and Plaintiffs' possessory interests in said property in violation of Plaintiffs' First, Fourth, and Fourteenth Amendment rights.

32. No evidence of any crime or contraband was ever found. The items seized were a notebook marked "Jesa's only" and a Hewlett Packard computer. Defendant Figurski submitted Plaintiffs' computer to computer forensic expert Charlene Warner to generally search for information pertaining to suicide intentions, frustration, anger, hate and any personal journal information or conversations that may have taken place giving any indication of the state of mind of the deceased Jesalynn Simons. The search of the computer was also overbroad in that it included searches for "Jody Coopshaw" and other such searches which were not reasonably related to any crime and for which there was no probable cause and which violated the privacy of Plaintiff Jody Coopshaw. Upon completion of the examination of the digital copy of the Hewlett Packard computer, there were no files containing the requested information.

33. Plaintiffs had a legitimate expectation of privacy in the sanctity of their home and the personal writings and thoughts in the home computer and journal unlawfully and unreasonably searched for and seized by Defendants, as there is no objectively reasonable basis that either resident or anyone connected to the resident had engaged in or had been involved with any crime or contraband of which evidence could be found at Plaintiffs' residence. There was no reasonable basis for any officer, judicial or otherwise, to believe that anything criminal was occurring at Plaintiffs' apartment. There was no nexus between the place to be searched, evidence of a crime, and the arrestee. The search warrant and affidavit did not connect the searched

residence to any alleged illegal activity other than the police chase involving the deceased Jesalynn Simons and there was no reasonable basis for Defendants Shaw, Figurski, or Farrell to believe that evidence relating to the chase would be found at Plaintiffs' apartment, or that any criminal charge could ever grow out of seized evidence. The search warrant also did not state that a person engaging in illegal activity away from the residence lived at the searched residence. There was no probable cause to believe that a crime was being or had been committed at the residence of Plaintiffs. There was no fair probability that evidence of a crime would be found at the Plaintiffs' residence.

COUNT I

VIOLATION OF PLAINTIFFS' FIRST, FOURTH, AND FOURTEENTH AMENDMENT RIGHTS

Plaintiffs reallege and reincorporate the paragraphs set forth above as if fully set forth herein.

34. Plaintiffs had a clearly established constitutionally protected right to be free from unreasonable searches of their residence, especially general searches without probable cause, long held unconstitutional pursuant to the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiffs also had clearly established First Amendment rights of free association and to petition the Government for the redress of grievances.

35. Defendants Figurski, Farrell and Shaw deprived Plaintiffs of their First, Fourth, and Fourteenth Amendment rights, while acting under color of state law, by the following actions, among others:

- a. Knowingly, intentionally, or with reckless disregard for the truth, stating that probable cause for the warrant existed when an objectively reasonable officer in any of the Defendants' positions would have believed probable cause did not exist, due to the death of Jesalynn Simons and the totality of the circumstances as a whole;
- b. Knowingly, intentionally, or with reckless disregard for the truth, seeking said search warrant based on mere suspicion through hearsay information provided by a named informant without credibility or reputation of being a reliable informant, such that no objectively reasonably cautious officer could believe that there was probable cause that the search would uncover evidence of a chargeable crime;
- c. Knowingly, intentionally, or with reckless disregard for the truth, acting unreasonably in wrongfully seeking and securing a search warrant based on inaccurate, inadequate, false information, and an unreliable witness who did not have personal knowledge of the information regarding the items to be sought or their location;
- d. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably seeking a search warrant for Plaintiffs' residence without a particularized and objective basis for the search.
- e. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably including a catch-all clause in the search warrant

which would give officers broad discretion as to what to search for, failing the particularity requirement of the Fourth Amendment.

- f. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably seeking a search warrant with the intent to search for evidence relating to possible civil litigation.
- g. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably seeking a search warrant with the purpose of improving the public image of various state officials and entities and to taint the public image of the Plaintiffs.
- h. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably seeking a search warrant with the purpose of searching Plaintiffs' premises in order to intimidate and/or harass Plaintiffs into not filing a civil claim related to the shooting of Plaintiffs' relative, Ms. Simons, in violation of the Plaintiffs' First Amendment right to petition the Government for a redress of grievances.
- i. Knowingly, intentionally, or with reckless disregard for the truth, unreasonably seeking a search warrant for the purpose of interfering with Plaintiffs' First Amendment rights of free association.

36. Defendant Figurski deprived Plaintiffs of their First, Fourth, and Fourteenth Amendment rights, while acting under color of state law, by the following actions, among others:

- a. Acting maliciously, recklessly, and unreasonably under the circumstances in his execution of the warrant knowing, with reckless disregard for the truth, or in the exercise of due diligence should have known, that no probable cause existed for said warrant.
- b. Acting maliciously, recklessly, and unreasonably under the circumstances in his execution of the warrant and knowingly, intentionally, or recklessly inflicting emotional distress upon Plaintiffs by conducting the unreasonable search during the funeral of the deceased, Ms. Simons in order to intimidate and/or harass Plaintiffs into not filing a civil cause of action related to the shooting of Jesalynn Simons.
- c. Knowingly, intentionally, or with reckless disregard for the truth, conducted an unreasonable search of Plaintiffs' residence and property for narcotics for which there was no probable cause and which were never specified in the warrant.
- d. Knowingly, intentionally, or with reckless disregard for the truth, conducted an unreasonable and unconstitutional search of Plaintiffs' residence and property without probable cause and as a pretext for discovering evidence in anticipation of civil litigation, as a pretext for improving the public image of state officers, officials, and entities, as a pretext to intimidate and harass Plaintiffs into not filing

a cause of action related to the shooting of Jesalynn Simons, and as a pretext for attempting to taint the public image of Plaintiffs.

- e. Knowingly, intentionally, or with reckless disregard for the truth, violated the sanctity of Plaintiffs' home in an unreasonable search without probable cause utilizing a catch-all clause.
- f. Knowingly, intentionally, or with reckless disregard for the truth, conducted an unreasonable seizure of Plaintiffs' property denying Plaintiffs' their possessory interests in the property.
- g. Knowingly, intentionally, or with reckless disregard for the truth, utilizing a facially invalid warrant to search generally through personal belongings of those other than Jesalynn Simons.

37. There was no objectively reasonable basis for Defendants Shaw, Figurski, or Farrell to believe that there was probable cause to search Plaintiffs' home. There was deliberate indifference to the right of Plaintiffs to be free from unreasonable searches and seizures pursuant to the Fourth Amendment to the U.S. Constitution. The action of Defendants further shock the conscience by conducting an arbitrary invasion into Plaintiffs' home and a general or exploratory search of Plaintiffs' premises and property, specifically banned by the Fourth Amendment to the U.S. Constitution and abusing the powers granted to police by using the warrant as a pretext for subverting the judicial process of civil discovery by searching for evidence in anticipation of civil litigation, to bolster the Defendants' credibility and to intimidate and/or harass the Plaintiffs into not filing a cause of action related to the shooting of Jesalynn Simons,

without regard to the legal limits of police power or the constitutional rights of citizens the Defendants were charged to protect.

38. As a direct and proximate result of the above-described Defendants' acts and omissions, Defendants deprived Plaintiffs of their right to free association and their right to petition the Government for a redress of grievances under the First Amendment as well as Plaintiffs' right to be free from unlawful and unreasonable searches and seizures in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983.

WHEREFORE Plaintiffs respectfully request this Court to find that Defendants deprived Plaintiffs of their right to be free from unreasonable searches and seizures and their right to petition the government for a redress of grievances under the United States Constitution and are liable to Plaintiffs, under 42 U.S.C. § 1983, for all damages arising out of this action, including compensatory and punitive damages, attorney's fees, costs, in any amount over \$75,000 which this Court deems appropriate, including but not limited to:

- a. Pain and suffering, past and future;
- b. Humiliation, outrage, and embarrassment, past and future;
- c. Harm to Plaintiffs' reputation as persons of honesty and integrity;
- d. Mental anguish and emotional distress, past and future;
- e. Actual and reasonable attorney fees and costs;
- f. Punitive damages.

COUNT II

CONSPIRACY TO VIOLATE PLAINTIFFS' CIVIL RIGHTS BY DEFENDANTS COGNIZABLE UNDER 42 U.S.C. § 1983

40. Plaintiffs reallege and reincorporate the paragraphs set forth above as if fully set forth herein.

41. Defendants, acting in their individual capacities, and Defendant Shaw acting in his official capacity, under color of state law, having conspired together, reached a mutual understanding and acted to undertake a course of conduct that violated Plaintiffs' civil rights as stated in Count I. Plaintiffs' civil rights were violated under 42 U.S.C § 1983 when Plaintiffs conspired to perform all acts stated in Count I.

42. Those Defendants who may not have actively participated in the deprivations set forth herein are liable for being part of the conspiracy which violated Plaintiffs' rights as stated in Count I.

43. As a direct and proximate result of the conspiracy between Defendants as described, Plaintiffs have been deprived of their right to be free from unreasonable and unlawful search and seizure, to equal protection of the laws, and to due process rights to be free from arbitrary and unreasonable action, which are secured under the Fourth and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

WHEREFORE Plaintiffs respectfully request this Court to find that Defendants conspired to deprive Plaintiffs of their right to be free from unreasonable searches and seizures, to equal protection of the laws, and to due process rights to be free from arbitrary and unreasonable action, which are secured under the First, Fourth, and Fourteenth Amendments to the United States Constitution and are liable to Plaintiffs, under 42 U.S.C. § 1983, for all damages arising out of this action, including

compensatory and punitive damages, attorney's fees, costs, in any amount over \$75,000 which this Court deems appropriate, including but not limited to:

- a. Pain and suffering, past and future;
- b. Humiliation, outrage, and embarrassment, past and future;
- c. Harm to Plaintiffs' reputation as a person of honesty and integrity;
- d. Mental anguish and emotional distress, past and future;
- e. Actual attorney fees and costs;
- f. Punitive damages.

COUNT III

SUPERVISORY LIABILITY OF DEFENDANT STEVEN FARRELL **COGNIZIBLE UNDER 42 U.S.C. § 1983**

Plaintiffs reallege and reincorporate the paragraphs set forth above as if fully set forth herein.

44. Defendant Farrell took an active part in the plan and conspiracy to violate Plaintiffs' constitutional rights and encouraged the Defendant Officers' conduct.

45. Defendant Farrell was reckless or grossly negligent in supervising, approving, and/or encouraging the Defendants' conduct.

46. Defendant Farrell failed to take any preventative or remedial measures to guard against the conduct of the other Defendants set forth herein. Specifically, Defendant Farrell gave express authorization to violate Plaintiffs' constitutional rights by granting approval of the operational plan to execute the warrant and conduct the unlawful and unreasonable search of Plaintiffs' premises and property.

47. Had Defendant Farrell taken preventative or remedial measures to guard against the conduct of the other Defendant officers, Plaintiffs would not have suffered

the deprivations of their rights fully set forth herein.

48. The failure of Defendant Farrell to take preventative or remedial measures to guard against the conduct of the other Defendant officers amounted to gross negligence, deliberate indifference, or deliberate misconduct, which directly caused the deprivations suffered by Plaintiffs. Defendant Farrell failed to train, instruct, supervise, and discipline the Defendant officers, and said failure caused Plaintiffs' damages.

49. As a direct and proximate result of to above-described unlawful and malicious acts of Defendant Farrell, Plaintiffs were deprived of their rights to: petition the Government for a redress of grievances, free association, be free from unlawful and unreasonable search and seizure, to equal protection of the laws, and to Due Process of law, in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

WHEREFORE Plaintiffs respectfully request this Court to find that Defendant Farrell deprived Plaintiffs of their right to be free from unreasonable searches and seizures, to equal protection of the laws, and to due process rights to be free from arbitrary and unreasonable action, which are secured under the First, Fourth, and Fourteenth Amendments to the United States Constitution and are liable to Plaintiffs, under 42 U.S.C. § 1983, for all damages arising out of this action, including compensatory and punitive damages, attorney's fees, costs, in any amount over \$75,000 which this Court deems appropriate, including but not limited to:

- a. Pain and suffering, past and future;
- b. Humiliation, outrage, and embarrassment, past and future;
- c. Harm to Plaintiffs' reputation as a person of honesty and integrity;

- d. Mental anguish and emotional distress, past and future;
- e. Actual attorney fees and costs;
- f. Punitive damages.

COUNT IV

DEFENDANT SHAW'S VIOLATION OF PLAINTIFFS' FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES AND FIRST AMENDMENT RIGHTS OF FREE ASSOCIATION AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES

Plaintiff realleges and reincorporates in full the paragraphs above as if set forth in full herein.

51. Defendant Shaw, acting in his investigative capacity and not in his prosecutorial capacity, knowingly, intentionally, and/or recklessly violated Plaintiff's Fourth Amendment Rights to be free from unreasonable searches and seizures by assisting Defendant Figurski in drafting the search warrant and search warrant affidavit and then approving it. Defendant Shaw did this in furtherance of a plan to: unreasonably invade the Plaintiffs' home and to search freely through the Plaintiffs' personal belongings in an effort to intimidate and harass Plaintiffs whom they suspected may file a civil action arising from the death of their relative Jesalynn Simons, to bolster Defendants' own credibility and diminish that of Plaintiffs, and to illegally obtain evidence it hoped to use in defense of a civil action arising from the death of Jesalynn Simons.

52. WHEREFORE Plaintiffs respectfully request this Court to find that Defendant Shaw deprived Plaintiffs of their right to be free from unreasonable searches

and seizures, to equal protection of the laws, to the freedom to petition the Government for a redress of grievances, and to due process rights to be free from arbitrary and unreasonable action, which are secured under the First, Fourth, and Fourteenth Amendments to the United States Constitution and are liable to Plaintiffs, under 42 U.S.C. § 1983, for all damages arising out of this action, including compensatory and punitive damages, attorney's fees, costs, in any amount over \$75,000 which this Court deems appropriate, including but not limited to:

- g. Pain and suffering, past and future;
- h. Humiliation, outrage, and embarrassment, past and future;
- i. Harm to Plaintiffs' reputation as a person of honesty and integrity;
- j. Mental anguish and emotional distress, past and future;
- k. Actual attorney fees and costs;
- l. Punitive damages.

COUNT V

COUNTY LIABILITY FOR THE INDIVIDUAL DEFENDANTS' VIOLATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS

Plaintiff realleges and reincorporates in full the paragraphs above as if set forth in full herein.

50. Plaintiffs had a right under the Fourth Amendment of the Constitution of the United States of America to be free from unreasonable searches and seizures.

51. Defendant, Lenawee County, deprived Plaintiffs of their Fourth Amendment rights, while acting under color of state law, by the following actions, among others:

a. Failing to properly establish a training program and/or train and supervise its officers and employees, including Defendant Shaw, as to the proper procedures for handling usual and recurring situations with which officers and prosecutors must deal, including but not limited to:

- i. Obtaining search warrants
- ii. Executing search warrants
- iii. Refraining from all of the unlawful acts heretofore alleged by Plaintiffs

b. Failing to establish or create appropriate policies and/or procedures for police officers to employ as to the proper procedures for handling usual and recurring situations with which officers and prosecutors must deal, including but not limited to:

- i. Obtaining search warrants
- ii. Executing search warrants
- iii. Refraining from all of the unlawful acts heretofore alleged by Plaintiffs

c. Alternatively, if at the time the search warrant was sought and executed it was the policy of Lenawee County to utilize catch-all clauses and allow searches without probable cause and for the reasons as herein alleged by Plaintiffs, as here where the alleged target of the investigation is deceased and civil litigation may ensue, then Lenawee County is liable to Plaintiffs for having such policy.

52. The actions of the Defendant Lenawee County in failing to train its police officers and prosecutors, including Defendant Shaw, and/or to establish policies and procedures in the ways set forth above in its unconstitutional policy and/or culture, resulted in a deprivation of Plaintiffs' Fourth and Fourteenth Amendment constitutional rights to be free from unreasonable searches and seizures.

53. As a direct and proximate result of the above-described acts and omissions, Plaintiffs' First Amendment right to free association and to petition the Government for a redress of grievances and Plaintiffs' Fourth Amendment rights to be free from unreasonable searches and seizures were violated, resulting in serious and permanent injuries to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request this Court to find that Defendant Lenawee County deprived Plaintiffs of their rights to: be free from unreasonable searches and seizures, equal protection of the laws, free association, petition the Government for a redress of grievances, and to due process rights to be free from arbitrary and unreasonable action, which are secured under the First, Fourth, and Fourteenth Amendments to the United States Constitution and are liable to Plaintiffs, under 42 U.S.C. § 1983, for all damages arising out of this action, including compensatory and punitive damages, attorney's fees, costs, in any amount over \$75,000 which this Court deems appropriate, including but not limited to:

- a. Pain and suffering, past and future;
- b. Humiliation, outrage, and embarrassment, past and future;
- c. Harm to Plaintiffs' reputation as a person of honesty and integrity;
- d. Mental anguish and emotional distress, past and future;

- e. Actual attorney fees and costs;
- f. Punitive damages.

Respectfully submitted,

MORGAN & MEYERS, PLC

BY 

Courtney E. Morgan, Jr. (P29137)

Brian J. Nagy (P65542)

Attorney for Plaintiffs

3200 Greenfield, Suite 260

Dearborn, MI 48120-1802

(313) 961-0130

DATED: July 18, 2006

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JODY LYNN COOPSHAW, and
ROBERT LARRY THORNTON,
as Next Friend of ALEXIS PAIGE
ARECENA, a Minor

Case No.
Honorable

Plaintiff,

v.

DETECTIVE SERGEANT JOHN
FIGURSKI, individually, of the Michigan
State Police; FIRST LIEUTENANT
STEVEN FARRELL, individually, of the
Michigan State Police;
IRV SHAW, officially and individually, of
the Lenawee County Prosecutor's
Office; and
LENAWEE COUNTY

Defendants.

Courtney E. Morgan, Jr. (P29137)
Brian J. Nagy (65542)
Attorneys for Plaintiffs
Morgan & Meyers, PLC
3200 Greenfield, Suite 260
Dearborn, MI 48120-1802
(313) 961-0130

DEMAND FOR TRIAL BY JURY

NOW COMES the above-named Plaintiffs, Jody Coopshaw and Robert Larry Thornton, as next friend of Alexis Page Arecena, by and through their attorneys,

MORGAN & MEYERS, and hereby demand a trial by jury in connection with the above-captioned matter.

Respectfully Submitted,

MORGAN & MEYERS, PLC

By:



Courtney E. Morgan, Jr. (P29137)
Jeffrey T. Meyers (P34348)
Brian J. Nagy (65542)
Attorneys for Plaintiffs
3200 Greenfield, Suite 260
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(313) 961-0130

Dated: July 18, 2006

Page 1

State of Michigan

SS

County of

SEARCH WARRANT

To the Sheriff or any peace officer of said county: D/SGT FIGURSKI Affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists:

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:

The apartment/residence of Jesalynn Simons and her mother, Jody Coopshaw, located at 1897 West Maumec Street, Apartment #A6, West Terrace Apartments, Adrian, Michigan.

and to seize, secure, tabulate and make return according to law the following property and things:

Any/all notebooks, journals, diaries, letters, notes, computer based information appearing to belong to Jesalynn Simons, an approximate six inch by six inch black box, and any other evidence which may explain the manner in which said vehicle was operated, and /or why the vehicle operator evaded a traffic stop, attempted to flee and elude the police effort to stop the vehicle safely and assaulted police officers with said vehicle.

*Search
Warrant*

Approved:

[Signature]
Assistant Prosecuting Attorney

[Signature]
Judge / Magistrate

Lenawee County Michigan

2003-10-01
62



Page 2

State of Michigan

SS

County of

RETURN and TABULATION

1 - HEWLETT PACKARD
HP PAVILLION XG833
SYSTEM NUMBER - P3987A
SERIAL NUMBER - MX1080829Z
HARD DRIVE.

1 - RED NOTEBOOK 10 1/2" x 8"
COLLEGE RULE 70 SHEETS
MARKED "JESA'S ONLY"

0234

Continued on reverse side? _____

Judgesla PKGT
Officer ELMICKY.1

[Signature]
Witness

18-2071-03

Page 3

State of Michigan

SS.

County of

COPY of search warrant and tabulation served on Kitchen Table 12-16-03
Date tabulation filed: 12-17-03 Date*via Cant open Trooper Notarup***AFFIDAVIT FOR SEARCH WARRANT****The following facts are sworn to by affiant in support of the issuance of this warrant :**

1. Affiant is a Detective Sergeant with the Michigan State Police currently assigned to the Adrian Post and has thirteen years of law enforcement experience.
2. Affiant is investigating a shooting incident involving a 1986, Buick, Century, four door, bearing Michigan registration XFC533, tan in color, registered to Robert and Lillian Thornton, 365 March Dr. Adrian, Michigan.
3. The preliminary investigation indicates that at about 5:00PM this dated, 12/11/03, a Lenawee County Deputy Sheriff, on routine patrol, sighted the vehicle above described. Said vehicle was being operated by its only occupant, now identified as Jesalynn Rene Simons, dob:9/5/1985. The vehicle was then located on northbound M-52 near Cutis Road in Adrian Township, Lenawee County, Michigan.
4. Affiant was informed by said officer that the vehicle came to his attention because one of the vehicle headlamps was not functioning, the vehicle was straddling the two northbound lanes, then weaved within the east northbound lane, and that he attempted to stop said vehicle by activating his marked patrol car emergency lights and siren.
5. He further reports that the driver and sole occupant of said vehicle responded by turning south on Howell Highway and accelerating in an effort to flee, at which time the deputy called for assistance.
6. Officer reports to affiant that the pursuit continued over a distance of 1 mile or more to a point where said vehicle was fleeing westbound on US-223 near Wolf Creek Highway, with the original sheriff patrol car and three other marked patrol vehicles in pursuit, and that the operator of the vehicle was still operating said vehicle in a reckless and dangerous manner, and at that point all four vehicles were using their emergency lights and sirens in an effort to stop the fleeing vehicle.
7. Affiant has seen a video recording taken by a camera on-board one of the pursuing patrol vehicle. The video indicates to affiant that the officers were then attempting to stop said vehicle by maneuvering their vehicles so as to partially box-in the fleeing vehicle and east it safely off the highway. The video shows considerable other traffic and indicates, generally, a very dangerous situation.
8. The video further indicates to affiant that Simons was still fleeing and eluding and swerved her vehicle into contact one of the police cars, and that this action on her part resulted in a situation

18-2971-03

Page 4

State of Michigan

SS

County of

9. The video further indicates to affiant that Simons then began using her vehicle in a forward and reverse motions in an apparent effort to strike police vehicles and/or police officers, some of whom, by this point, were out of their vehicles and on foot. Further, the video indicates to affiant that State Police Trooper Rivard's position was on foot within a few feet of the right front door of the said vehicle, and he was nearly struck or run down by the operation of said vehicle by Jesalynn Simons, and that as Trooper Rivard moved to avoid being hit, he fired his service pistol at the right front door of said vehicle.
10. Affiant has been informed that the driver, Simons, was struck in the legs by said shot. The video indicates that the result was that there was no further effort to flee or assault officers.
11. Jesalynn Simons was treated at the Medical College of Ohio, and apparently died as a result of wounds, her vehicle is under impoundment.
12. Rosalynda Martinez-Faz informed your affiant that she was Jesalynn Simons legal guardian for approximately one year prior to Jesalynn's 17th birthday. Jesalynn Simons lived with Martinez - Faz several times during that time.
13. Affiant was informed by Martinez - Faz that Jesalynn Simons had a "really bad Temper". Martinez - Faz stated she taught Jesalynn Simons to write her frustration down in a journal in an effort to control her anger. Jesalynn Simons told Martinez - Faz she wrote in her journal every day. Martinez -Faz witnessed Simons making the said entries in her journal on several occasions.
14. Affiant was informed by Martinez - Faz that she spoke to Jesalynn Simons approximately three weeks prior to 12-11-03. Simons advised Martinez - Faz she was depressed, suicidal, had recently quit her job, and had no money. Martinez - - Faz advise your affiant that Simons had also talked of suicide on past occasions.
15. Affiant was advised by Martinez - Faz that she spoke to Jesalynn Simons on 12-8-03 via telephone. Simons advised Martinez - Faz she was depressed and "frazzled" to the point where she could not think straight, and asked Martinez - Faz for approximately \$500.
16. Affiant was informed by Martinez -Faz that Jesalynn Simons contacted her from Jody Coopshaw's residence via telephone on 12-10-03. During the conversation Simons told Martinez -Faz she had made entries into her journal that day. Simons also agreed to meet with Martinez - Faz on 12-16-03 at the Adrian Fazolis to discuss her current frustrations. Simons told Martinez - Faz she would bring her journal to the meeting.
17. Martinez -Faz informed your Affiant that Jesalynn Simons told her she kept her current journal between the mattresses of her bed and kept the completed editions of her journal in a white clothes hamper. Simons also retained numerous letters, notes, etc she considered significant in the above described black box.
18. Affiant was informed by Larry Thornton, Jesalynn Simons' grandfather, that Jesalynn had moved into her mother's Jody Coopshaw's apartment several weeks prior to 12-11-03.

Page 5

State of Michigan

SS

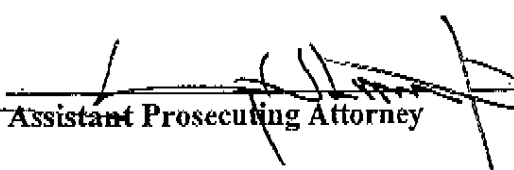
County of

Thornton advised Jody Coopshaw lives in an apartment building located near the scene of the shooting incident, believed to be the West Terrace Apartment complex.

19. Affiant was informed by the owner of the West Terrace Apartment complex, Katherine Tipton, that Jody Coopshaw was one of her tenants and was currently living at 1897 W Maumee Apartment #A6, Adrian, Michigan.
20. Affiant seeks warrant to search said apartment for the reasons set forth above in an effort to determine with the most positive certainty what factors lead to the above incident and what crimes may have been committed and the reasons therefor.
21. Further Affiant sayeth not.


Affiant

Approved :


Assistant Prosecuting Attorney


Judge/Magistrate

 Dec 16, 2003
Date

on the 18th day of July

to the State of New York

of the County of New York

for the sum of \$100.00

to the order of the State

of New York

Sub Acct	Debit	Credit	Balance
1:000000 N	100.00		100.00
2:000000 R		100.00	100.00
3:000000 W		100.00	100.00

Total Debit \$100.00

Total Credit \$100.00

NEW CASE NO. 1000000000

For July 18 1857

Check No. 2570

amount \$100.00

to the order of the State Bank or
any other bank or credit to
the order of the State

ORIGINAL SHEETCounty in which this action arose LENAWEE

The JS 44 civil cover sheet and the information contained herein shall not be used to supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JODY LYNN COOPSHAW, and ROBERT LARRY THORNTON as Next
Friend of ALEXIS PAIGE ARECHENA, a minor

(b) County of Residence of First Listed Plaintiff Lenawee
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Courtney E. Morgan, Jr. (P29137)
3200 Greenfield Road, Suite 260
Dearborn, MI 48120 313-961-0130

II. BASIS OF JURISDICTION

(Select One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. C

Cit

Citizen of Another State

Citizen or Subject of a Foreign Country

DEFENDANTS

DETECTIVE SERGEANT JOHN FIGURSKI, FIRST LEUTENANT STEVEN
FARRELL, IRV SHAW, COUNTY OF LENAWEE

County of Residence of First Listed Defendant Lenawee
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Case: 2:06-cv-13246

Assigned To: Borman, Paul D

Referral Judge: Scheer, Donald A

Filed: 07-18-2006 At 03:03 PM

CMP COOPSHAW, ET AL V FIGURSKI, ET

AL (EW)

ant)
DEF
☐ 4

IV. NATURE OF SUIT

(Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Select One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
Illegal search violating 4th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
\$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

July 18, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
